

REMARKS

The Examiner is thanked for the performance of a thorough search. By this amendment, Claims 1, 4-5, 7, 10-11, 13-14, 16-17 and 19 have been amended, and claims 3, 9 and 15 have been cancelled. Accordingly, Claims 1-2, 4-8, 10-14 and 16-20 are pending in this application. The amendments to the claims do not add any new matter to this application. Furthermore, the amendments to the claims were made to improve the readability and clarity of the claims and not for any reason related to patentability. Each pending claim is in condition for allowance over the cited art because one or more elements of each pending claim is not disclosed, taught, or suggested by the cited art.

OBJECTION TO ABSTRACT

The abstract was objected to for failing to conform to the language and format requirements of the USPTO. The abstract has been amended as indicated herein to satisfy the requirements of the USPTO. In particular, the length of the abstract now falls within the recommended range of 50-150 words. In view of the amendments to the abstract made herein, reconsideration and withdrawal of the objection to the abstract is respectfully requested.

REJECTION OF CLAIMS 1-3, 6-9, 12-15 AND 18-20 UNDER 35 U.S.C. § 102(e)

Claims 1-3, 6-9, 12-15 and 18-20 were rejected under 35 U.S.C. § 102(e) as being anticipated by *Shurmer*, U.S. Patent No. 5,974,237. The rejection is herein respectfully traversed.

Independent Claims 1, 7, 13, and 19 include one or more limitations that are not taught or suggested by *Shurmer*. For example, all of these claims require “receiving a schema that provides a configuration for monitoring a service level contract, wherein the schema comprises data defining one or more tests for measuring the level of network service being provided to a particular customer.” This limitation is not taught or suggested by the cited references.

Shurmer is directed to a method of monitoring a network by contemporaneously performing a plurality of monitoring sessions, each session monitoring a selected operational parameter or set of parameters. During a monitoring session, a user selects which network connections to monitor and a period over which to monitor a service, and is presented with a graphic display of the selected operational parameters. The system disclosed in *Shurmer* is an interactive system, in which users select the network components and operational parameters, and view reports based on the selections. This is completely different from the claimed invention. In one embodiment of the claimed invention, a level of service is automatically measured and monitored according to the tests and time ranges specified in a schema.

The Examiner correctly noted in Paragraph 16 of the Office Action, *Shurmer* does not teach or suggest “generating a schema based on Extensible Markup Language, wherein the schema provides a template for defining a service level contract” as required by original claim 4. Applicants note that *Shurmer* does not teach any type of schema, much less “a schema that provides a configuration for monitoring a service level contract, wherein the

schema comprises data defining one or more tests for monitoring the level of network service being provided to a particular customer” as required by the amended independent claims.

Furthermore, *Shurmer* does not teach or suggest “distributing the one or more tests to one or more agents, wherein the one or more agents are configured to communicate with devices that are associated with the network” as required by the independent claims. The cited sections of *Shurmer* merely teach that data signals are collected from network elements. In contrast, the claimed invention requires that tests be distributed to agents. As described at Page 13, lines 3-16 of the present specification, agents in the present invention may be computers that perform the setup and polling of the managed devices to obtain metric information about the quality of service. In one embodiment, the agents store metric information from the tests locally and communicate back to the SLM Server at a later time. *Shurmer* does not teach or suggest the use of agents to communicate with the network devices through monitoring tests, but rather directly collects information in the form of data signals.

Applicants respectfully request withdrawal of the rejection under 35 U.S.C. 102(e) for independent claims 1, 7, 13 and 19. Dependent claims 2, 6, 8, 12, 14, 18 and 20 all include the limitations of the independent claims by virtue of their dependence. It is therefore respectfully submitted that the dependent claims are patentable over the cited art for at least the reasons set forth herein with respect to the independent claims.

Furthermore, it is respectfully submitted that the dependent claims recite additional limitations that independently render them patentable over the cited art.

For example, claim 2 requires “creating and storing reporting information that indicates whether the customer is receiving, during the specific time range, the level of network service offered by the service provider.” The section of *Shurmer* cited in the Office Action only discloses that “each user is presented with an individual graphical display of selected performance parameters for each monitoring session.” (Col. 20, lines 62-64). Claim 2 requires reporting information that indicates whether the customer is receiving the level of network service offered by the service provider. There is nothing in *Shurmer* that ties the information received during a monitoring session with the level of service offered by a service provider.

In view of the foregoing, it is respectfully submitted that Claims 1-2, 6-8, 12-14 and 18-20 are patentable over the cited references. Accordingly, reconsideration and withdrawal of the rejection under 35 U.S.C. § 102(e) is respectfully requested.

REJECTION OF CLAIMS 4-5, 10-11, 16-17 UNDER 35 U.S.C. § 103(a)

Claims 5, 11 and 17 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Shurmer* in view of *Schuster*, U.S. Patent No. 6,363,053; and claims 4, 10 and 16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over *Shurmer* in view of *Schuster*, and *Ballantyne*, U.S. Patent No. 6,687,873. It is respectfully submitted that Claims 4-5, 10-11, 16-17 are patentable over *Shurmer*, *Schuster* and *Ballantyne*, alone or in combination, for at least the reasons provided hereinafter.

Claims 4-5, 10-11, 16-17 depend from independent claims 1, 7 and 12 respectively, and include all of the limitations of these claims. As previously set forth herein, the independent claims includes one or more limitations that are not taught or suggested by

Shurmer. It is also respectfully submitted that these limitations are also not taught or suggested by *Schuster* or *Ballantyne*.

As noted above, the Examiner correctly states in Paragraph 16 of the Office Action that *Shurmer* does not teach or suggest a schema that provides a template for defining a service level contract. The Examiner relied on *Schuster* to teach a schema that provides a template for defining a service level contract. However, the cited sections of *Schuster* only teach that a Service Level Agreement (SLA) is an agreement between a user and a service provider that contractually defines the level of service to be provided. (Col. 1, lines 61-67, Col. 2 lines 1-18). *Schuster* teaches that different levels of service, or “schemes”, can be incorporated in a SLA. The other cited section of *Schuster* merely points out that a user retrieves access to a network by obtaining a service contract from a service provider. (Col. 5, lines 8-12).

Schuster does not teach or suggest using a schema to model the requirements of a Service Level Contract (SLC) or SLA. A “scheme” as used in *Schuster* only refers to the concept that SLAs may define many different levels of service (or “schemes” as used in *Schuster*). This is completely different from the “schema” as used in the claimed invention; indeed, the term “schema” has a well-understood meaning in the field of databases and data definitions that has nothing to do with a scheme. For example, as described at Page 20, line 8 – Page 40, line 23, the example SLC schema shown in Fig. 7 contains one or more SLA components, as well as an ApplyTime component. Each SLA component in the SLC schema is comprised of one or more metric tests. The example SLC schema shown in Fig. 7 provides a configuration for monitoring a service level contract through the ApplyTime and

SLA components. In this embodiment, the SLA components define one or more tests for monitoring the level of network service, and the ApplyTime component provides information defining a specific time range for when the one or more tests are to be performed.

Schuster does not teach or suggest a schema that provides a configuration that can be used to monitor the level of service of a service provider. *Schuster* merely allows users to set up monitoring sessions that transmit test data and allows a user to dynamically determine a data path that meets a desired level of service.

Furthermore, *Ballantyne* does not teach or suggest creating a schema in XML format. *Ballantyne* merely teaches that XML can be used to produce output reports from legacy systems in XML format.

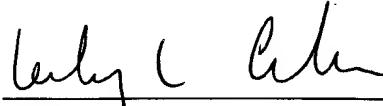
It is therefore respectfully submitted that Claims 4-5, 10-11 and 16-17 are not taught or suggested by *Shurmer*, *Schuster* and *Ballantyne*, alone or in combination and are patentable over the cited references. Accordingly, reconsideration and withdrawal of the rejection of Claims 4-5, 10-11 and 16-17 under 35 U.S.C. § 103(a) is respectfully requested.

It is respectfully submitted that all of the pending claims are in condition for allowance and the issuance of a notice of allowance is respectfully requested. If there are any additional charges, please charge them to Deposit Account No. 50-1302.

The Examiner is invited to contact the undersigned by telephone if the Examiner believes that such contact would be helpful in furthering the prosecution of this application.

Respectfully submitted,

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on May 20, 2004

by

